

Special Report

Electronic Filing

This article is the first of two on electronic filing in the courts. It focuses on activity in the federal courts. Next week's article will survey e-filing projects in the state courts.

Federal Electronic Case File Project Changing Way Lawyers Do Business

Federal courts are taking the lead in implementing electronic filing and case management practices. That, at least, is the view of Michael Greenwood of the Administrative Office of the United States Courts, who reports that nine federal courts are using the government's prototype Electronic Case File project.

So far, several thousand federal cases have been processed electronically and tens of thousands of documents have been filed without passing paper.

Greenwood heads the AO's research and development group working on the ECF project. A separate group is developing a schedule for offering an "official national product" to give to the federal courts—bankruptcy courts, district courts, and appellate courts. That offer may come as early as the first half of 2000, Greenwood says.

Goal: Integrated Case Management System. The ultimate objective of the federal initiative, Greenwood told BNA, is an integrated case management system. Electronic filing and docketing is a component of that package. Coupled with document and case management systems, the filing becomes the first step in creating an integrated case file that is available, in most instances, to the public as well as the parties and their counsel.

ECF, a prototype service initiated in January 1996, offers Internet access to official case records in nine federal courts: the U.S. District Courts for the Districts of Western Missouri, Eastern New York, Northern Ohio, and Oregon, and federal bankruptcy courts for Arizona, Southern California, Northern Georgia, Southern New York, and Eastern Virginia.

"Necessity is the mother of invention" would aptly describe the development of a single software system for case management, says AO's Diane DiMarco. The need first became clear when the Northern District of Ohio was deluged with multidistrict maritime asbestos litigation, DiMarco said, and the AO developed a system to consolidate and manage the onslaught.

From volunteers, the AO selected nine prototype jurisdictions. The relevant criteria guaranteed geographic diversity, different circuit representation, and size distinctions, DiMarco said.

Any pitfalls? Yes, said DiMarco, but not the ones that were expected. Cultural, policy, and legal issues, rather than technical problems, presented the biggest stum-

bling blocks. "Giving up paper isn't easy for everyone," she said.

Guided Motion Filing. The ECF prototype involves filing motions electronically, without a paper docket sheet. DiMarco described the process as "guided motion" filing, in which the attorney can select from lists of motions or even create new ones. This represents a paradigm shift in which the court, no longer the author of the docket sheet, becomes the quality assurance guarantor, DiMarco said.

Northern Ohio has been the most stringent about requiring electronic filing, DiMarco said. In that jurisdiction, a filer must show "just cause" for not filing electronically. The other prototype courts have been "not so extreme," she said.

Payment takes a variety of forms. The bankruptcy courts generally use credit cards. The courts hearing civil matters are not yet set up for that and usually follow the practice of accepting a complaint on disk from the filer, accompanied by a check.

Northern Ohio's original system for maritime asbestos filings accommodated data particular to that specific litigation. That court now has a separate database for a broader range of civil cases, DiMarco said.

At the outset, the prototype jurisdictions planned to restrict their experiments to specific types of cases: civil rights case; for Missouri, Social Security cases for Northern Ohio, and corporate counsel cases for Eastern New York. But this rigidity soon broke down. One federal judge in Missouri, DiMarco said, prefers all case filings via ECF; other jurisdictions are asking attorneys if they are interested and proceeding with whatever comes along.

Using ECF doesn't require a lot of fancy or expensive equipment, DiMarco said. On a word processor, a filer can log in to the court to create and attach software, such as Adobe Acrobat Exchange, that permits documents to be saved in portable document format (PDF).

The Administrative Office initially took responsibility for ECF training needs, but the participating courts themselves are now in the act, DiMarco said. Although AO goes to the courts to "train the trainers," the courts are coming up with ways to take the next step. One of the courts runs a training session when it gives attorneys a log-in and password; the clerk's office for another court holds a weekly question and answer ses-

sion. Training sessions and seminars that meet continuing legal education requirements are also a possibility, DiMarco said.

Greenwood cited two factors that make ECF "somewhat distinct" from various commercially developed packages used in a number of state courts. First, case management is the primary interest, and success in that effort carries with it the qualities most desirable for e-filing. Second, the entire system is Internet-based.

Cultural Change. ECF represents a cultural change for the judiciary and for attorneys, Greenwood acknowledged. It changes filing practices as well as ways of keeping up to date with a case. However, inducements accompany the change. A filer will know the moment of filing and will receive e-mail notification within minutes, he said.

The federal initiative addresses three concerns: how documents get to the court, how they get stored, and how people retrieve them. Greenwood emphasized that e-filing is just part of the AO's interest. The "real meat and potatoes is integration and case management."

Characterizing a paperless court as "one of the myths," Greenwood said filers can still use paper if they want or present a diskette to the court for loading into a file. The entire case is stored. Thousands of entire case files can already be searched, regardless of how they were originally filed, he said.

Various means of access are available. Some judges prefer to read a paper file; those who are more computer literate are content to read from a computer screen.

ECF meets its objectives, Greenwood said. It facilitates storage and access to official files, making them readily available 24 hours a day. It also allows fast and easy exchange of information among the court, parties, and attorneys.

Attorney Enthusiasm. Attorney Michael B. Sachs, who practices in San Diego, Calif., opted to file bankruptcy petitions exclusively via computer when the federal bankruptcy court in his jurisdiction opened its electronic doors. "Anyone halfway into the 20th century in a law firm with computers and the right type of bankruptcy software can do this," he said.

Sachs, who files between 30 and 50 petitions per month, says e-filing allows him to file "when and where I want." He also finds advantages in collectively filing cases, so that he can get a trustee for perhaps 10 cases and go to a hearing where all the cases will be handled, rather than having to schedule 10 independent trips to the courthouse.

Sometimes the flexibility and ease of filing translate into additional assistance for clients, Sachs said, because being able to file on the spot when a client comes to the office might make it possible to stop a wage garnishment or sale of property.

Resource savings can be considerable, too, Sachs observed. "No more original and three copies for the court. Now, it's a single copy over the Internet."

Adam C. Rogoff, of New York's Weil, Gotshal & Manges, also enjoys the benefits of e-filing: "It eliminates the mad rush to the courthouse." Filing electronically yields "tremendous time-saving benefits" by facilitating the tracking of a case and retrieving files, he said.

Through this system a law firm can develop an "electronic library" of its own that includes search capability

of vast document resources, Rogoff said. One benefit of such an undertaking is the ability to "check out what an adversary has said," he added.

Nothing But Praise From Clerks. Clerks of courts working with ECF are hard pressed to find anything negative to say. Cecelia G. Morris, bankruptcy clerk for the U.S. Bankruptcy Court for the Southern District of New York, told BNA that if anyone tried to take ECF away from the New York lawyers who have been working with the system, she "might have to find another job" to escape their wrath. "It's *that good a system*," she said. It improves lawyers' ability to do their jobs because it is "so correct, so efficient."

ECF no longer is a prototype in this jurisdiction, Morris said. "It's not the wave of the future; it's here and moving."

The quick success of the federal initiative "debunked a popular myth about government," Morris added. The AO took something from a concept to the market in a really short period of time and at a reasonable cost, she said.

The only "negative" has been the natural frustration in growing a system, Morris said. Getting there is "not as perfect as you'd like." The first group of bankruptcy lawyers to use ECF were like "Army volunteers," Morris said. The second group—the "self-selects"—is completely different. "We couldn't keep them out of the front door." Word of mouth and training, both in court and in lawyers' offices, have created enthusiasm, she said.

Still, lawyering is a conservative profession, and some apprehension naturally accompanies changes of this kind, Morris said.

Fraud Always a Problem. One challenge to those using ECF is the need for internal controls. ECF can't solve the problem of fraud, although it can facilitate tracking, Morris said. Lawyers will have to make sure they have safeguards in place to ensure that their passwords aren't compromised and that their personnel understand how the system works and the implications for abuse, she added.

Robert F. Connor, clerk for the U.S. District Court for the Western District of Missouri, shared Morris's praise for ECF. He boasted that his staff has introduced more than 2,000 lawyers to the system and shown them how to use it. Connor said his staff works closely with the state bar in training programs, informing Missouri attorneys about ECF and carrying on training sessions.

Bankruptcy is the perfect fit for ECF because it is "form-driven," Connor said, but electronic case management is "going to revolutionize the administration of justice" across the board. Since the beginning of this year, all civil cases in two of his offices, Jefferson City and Springfield, are treated as ECF cases, he said.

The original assumption was that the big law firms would be the most eager to shift to e-filing, Connor told BNA. But the "little guy" has turned out to be the most receptive. Small firms and solo practitioners see ECF as a way of leveling the playing field, he said, citing as an example a lawyer who practices in rural Missouri and can file the many civil rights and employment discrimination cases he handles "without having to drive into Springfield."

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